Filed 2/20/19 In re J.T. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.T., a Person Coming Under the Juvenile Court Law.	B288432 (Los Angeles County Super. Ct. No. VJ46135)
THE PEOPLE, Plaintiff and Respondent, v. J.T., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Fumiko H. Wasserman, Judge. Reversed with directions.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant

Attorney General, Colleen M. Tiedemann and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

J.T. (the minor) appeals from the juvenile court's order of wardship pursuant to Welfare and Institutions Code section 602. The minor was charged with two counts of second degree robbery, pursuant to Penal Code[1] section 211, and two counts of resisting executive officers by means of force or violence, pursuant to section 69. The juvenile court sustained all four counts.

On appeal, the minor contends there was insufficient evidence to support the juvenile court's finding that he committed the robbery alleged in count 1 because the prosecution failed to prove that he took the property from his victim by force or fear. He argues that count 1 should be reduced to the lesser included offense of grand theft. We agree and reverse.

II. BACKGROUND

A. *Procedural History*

On January 17, 2018, the Los Angeles County District Attorney's Office filed a petition under Welfare and Institutions Code section 602, alleging four counts. Only count 1 is relevant to this appeal. It alleged that on January 9, 2018, the minor committed second degree robbery on the victim.

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[1] Further statutory references are to the Penal Code unless otherwise indicated.

On February 7, 2018, following trial, the juvenile court sustained the petition and declared the minor a ward of the court.

B. *Prosecution's Case*

On January 9, 2018, at approximately 7:30 p.m., the victim drove to a Burger King restaurant in Bellflower to meet a potential buyer of a watch that she wanted to sell. The victim advertised on-line that she was selling a gold Nixon watch for $70. When she arrived at the restaurant, she saw the minor inside peering out the window. The victim approached the minor and asked if he was there to buy the watch; the minor said he was. They both went outside, where the victim took the watch out of its box and handed it to the minor. He tried to wear the watch, but it was too small. The minor handed the watch back to the victim, who said that she could enlarge the wristband, but she did not have the tool required to do so. According to the victim, "And that's when [the minor] grabbed it back out of my hand and ran."

The prosecutor and the victim then engaged in the following exchange:

"Q Okay. Were you holding the watch with one hand? Two hands?

"A With one hand, because I was approaching to show him the extra links that I had in the box with the watch.

"Q Okay. And was it a hard yank? Did he grab your hand when he pulled the watch?

"A Enough to take it from me, yes.

"Q So was it forceful?

"A Yes.

"Q And once he yanked the watch from your hand, what happened?

"A He ran."

During cross-examination, the minor's counsel asked the victim how she had been holding the watch before the minor took it from her. The victim did not recall whether the entire watch was in the palm of her hand or a portion of the watch was hanging off the sides of her hand. The minor's counsel continued:

"Q . . . [The minor] then grabbed the watch; correct?

"A Yes.

"Q Out of your hand?

"A Yes.

"Q And your hand was open?

"A Um, from what I remember, it was in my hand, yes. . . .

"Q . . . You're just having a conversation; correct?

"A Uh-huh.

"Q And the [minor] grabs the watch, pulls it out of your hand, and runs away; is that correct?

"A Yes."

C. *Defense Case*

The minor did not testify and offered no evidence.

III. DISCUSSION

The minor contends there was insufficient evidence to sustain the allegations as to count 1. We review challenges to the sufficiency of the evidence under the substantial evidence

standard. "Under that standard, '"an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements of the crime] beyond a reasonable doubt."'" (*In re George T.* (2004) 33 Cal.4th 620, 630-631.) '"We also presume the existence of every fact the lower court could reasonably deduce from the evidence in support of its judgment."' (*In re Daniel C.* (2011) 195 Cal.App.4th 1350, 1359; accord, *In re Jose O.* (2014) 232 Cal.App.4th 128, 133.)

The elements of robbery are: the defendant took property from the victim's possession and immediate presence, and the taking was by force or fear. (§ 211; *People v. Huggins* (2006) 38 Cal.4th 175, 214.) The minor disputes that there is sufficient evidence to support a finding that he used "force" within the meaning of section 211.[2]

"In terms of the amount of force required to elevate a taking to a robbery, 'something more is required than just that quantum of force which is necessary to accomplish the mere seizing of the property.' [Citation.] But the force need not be great: '"[a]ll the force that is required to make the offense a robbery is such force as is actually sufficient to overcome the victim's resistance . . . ."'" (*People v. Lopez* (2017) 8 Cal.App.5th 1230, 1235; *People v. Burns* (2009) 172 Cal.App.4th 1251, 1259.)

The Attorney General asserts the victim's testimony demonstrates the minor grabbed the victim's hand, which would be sufficient to support a finding that the minor used force during

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[2] The Attorney General does not argue that the minor used fear to take the watch and indeed no evidence about how the victim felt at the time of the robbery was admitted at trial.

the charged robbery. According to the Attorney General, the victim testified that "[the minor] grabbed her hand in a 'forceful' way when he pulled the watch away from her." We do not agree with the Attorney General's view of the testimony. The prosecutor asked the victim a compound question: "[W]as it a hard yank? Did he grab your hand when he pulled the watch?" In context, the victim's response of "Enough to take it from me, yes," suggests that the victim was responding to the first question, "Was it a hard yank?" The victim's use of the word "enough," suggests that she was describing the strength of the "yank," rather than agreeing that the minor had grabbed her hand. Even if we were to conclude that the victim's response was ambiguous, that ambiguity was clarified by the victim's later testimony that she was holding the watch in her open palm, when the minor "pull[ed] it out" of her hand. Moreover, the victim's testimony that the force used by the minor was "enough to take [the watch] from [her]," by its express terms, does not establish that the minor exerted any more force than required to take the watch.

The Attorney General also argues that because the victim testified the grab was "forceful," there was sufficient evidence to demonstrate force for purposes of a robbery. Again, we disagree. Witnesses may not generally testify about issues of law or draw legal conclusions. (See *People v. Torres* (1995) 33 Cal.App.4th 37, 45.) Such conclusory testimony is not substantial evidence. (*Downer v. Bramet* (1984) 152 Cal.App.3d 837, 841-842 [legal conclusion by expert witness was not substantial evidence].) In other words, the victim's testimony that the taking was "forceful" is not of such solid value that a trier of fact would find beyond a reasonable doubt that it satisfied the force element for robbery.

(*In re George T., supra*, 33 Cal.4th at pp. 630-631; see Evid. Code, § 800 [opinion testimony of lay witness admissible only when helpful to clear understanding of witness's testimony].)

Accordingly, we conclude there is insufficient evidence to support a finding of the element of force for count 1. "Where the elements of force or fear are absent, a taking from the person is grand theft, a lesser included offense of robbery." (*People v. Jones* (1992) 2 Cal.App.4th 867, 869; *People v. Morales* (1975) 49 Cal.App.3d 134, 139.) As the minor does not dispute he unlawfully took the watch from the immediate presence and possession of another, count 1 should be reduced to the lesser included offense of grand theft. (§ 487, subd. (c).)

IV. DISPOSITION

The judgment is reversed. The juvenile court is directed to delete the true finding for count 1 of second degree robbery and reflect a true finding of the lesser included offense of grand theft (§ 487, subd. (c)). We remand the matter to the juvenile court for a new disposition hearing and order consistent with this opinion.

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KIM. J.

We concur:

MOOR, Acting P. J.

SEIGLE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.